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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Working Group of Experts on People of African Descent on its mission to Germany

Addendum

Mission to Germany: comments by the State on the report of the Working Group

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I. General remarks

1. Germany closely cooperates with the special procedures working in the United Nations' human rights framework, values their contribution and has issued a standing invitation to them. The German government considers that reports of UN Working Groups and Special Rapporteurs provide an important outside perspective on the situation of human rights in our country and thus considers those reports and recommendations carefully. Such reports can also contribute to stimulate discussion within Germany. Therefore, the Federal Government wishes to thank the Working Group of Experts on People of African Descent (WGEPAD) for their visit and their recommendations, which will be thoroughly studied. Germany is strongly committed to combatting racism and discrimination, including with regard to people of African descent.

2. The protection and promotion of human rights is a core element of German policy, at national as well as at international level. This entails close cooperation with all relevant stakeholders. Therefore, the German government is closely engaging with civil society and experts on a variety of policy areas. and highly estimates findings and recommendations offered by experts whose international expertise offers an important perspective and valuable insights. During their visit, the Working Group identified a number of areas in which it recommends further efforts. At the same time, the Group was presented with a variety of examples of best practice, which the group commented on in a positive way during their visit. Regrettably, in many areas the report focusses almost exclusively on remaining challenges, while not mentioning positive examples which the Working Group had encountered during their visit. For example, the report fails to mention the instruments developed by federal as well as state police to ensure diversity in their recruitment, and the safeguards against racial profiling developed by the Federal Police, presented by the responsible authorities at Frankfurt Airport, which the group had positively commented upon at the time.

3. Within the visit's duration of one week, the Working Group followed an extensive schedule through eight cities, and tried to meet with as many institutions and civil society representatives as possible. This is commendable. However, it inevitably led to some time constraints. Therefore, a number of important issues discussed during the journey could only be addressed briefly, which may have led to some misunderstandings or contributed to some inaccuracies. The German government would like to take this opportunity to comment on some aspects presented in the report.

II. Statistics

4. Internationally, there is an open discussion regarding the advantages and disadvantages of collecting data based on ethnicity. In the case of Germany, the particular sensitivities of this question are evident, considering the darkest chapter of German history. Therefore, ethnicity is not used as a category in statistics in Germany. For example, government data does not distinguish between black and white immigrants who migrate from the same country. The German government does not intend to change this practice, as it sees no need to disaggregate data on the basis of ethnicity.

5. Government uses data on a person's citizenship and place of birth, and there is abundant information available on the population with migrant background, enabling it to analyze the situation of immigrants and their descendants, including their access to education, the labor market, health and education, their income and many other socio-economic characteristics. The statistical category of persons with migrant background covers persons born abroad as well as all migrants of the second-generation. Migrants of the third generation (and onward) are partially covered in official surveys (e.g. Micro-Census, Census). As the first generation of migrants typically faces the biggest challenges, omitting parts of the third generation should not lead to an underestimation of the challenges faced by people of African descent. Regarding the access to education, significant progress was made, in particular through simplifying the recognition of foreign

qualifications. Similar efforts were made regarding the labour market through new legislation.

6. The statistical practices also reflect the particular sensitivities of collecting data in the criminal justice system. As a general rule, none of the offenders' specific personal characteristics, including ethnicity, are recorded. A distinction between German and foreign nationals is made only in section 8 of the criminal prosecution statistics, which are publicly available and published annually by the Federal Statistical Office. Here, the numbers of convicted foreign nationals are listed in terms of the overall figures and in terms of selected nationalities (8.1), age group (8.2), the type of offence (8.3), the type of verdict (8.4) and in terms of selected nationalities (8.5). The selected nationalities include the category of people from Africa, and – due to the relatively high number of Moroccan citizens in Germany – the specific subgroup of people from Morocco. For the purposes of criminal justice statistics, there is no need or intention to break the figures down any further.

III. Policing

7. German law enforcement has to ensure that policing is done in accordance with human rights obligations and constitutional principles. This is reflected in ongoing efforts in police training as well as in a close cooperation with civil society. In recent years, a parliamentary Committee of Inquiry into the NSU ("NSU-Untersuchungsausschuss") had identified several areas where police needed to further improve their practices, especially when dealing with minority communities. The Committee's recommendations have been implemented by police, both on the federal and on the state level. Police officers receive intercultural trainings, helping them to act appropriately in difficult situations. There are also efforts to increase diversity of the police force, reflecting the growing diversity of the German population.

8. The review of any government action is guaranteed by the principle of the rule of law enshrined in the German constitution. The official complaints management procedures of the Federal Police include various internal and external possibilities for lodging a complaint to review any possible wrongdoing of police officers through an independent procedure conducted by supervisory authorities. To ensure an independent, impartial and comprehensive investigation into the matter, every incoming complaint is dealt with, and a thorough review is conducted. The Federal Police Headquarters has set up a special office which deals with complaints in a confidential way and serves as an additional contact point. In addition to these internal remedies, German administrative law provides a variety of legal remedies to persons who suspect any wrongdoing by the police.

9. With regard to the recommendation to end racial profiling, the German government would like to point out that all government institutions including police authorities are bound by the individual rights guaranteed by the German constitution. Any police action which interferes with constitutional rights needs to be appropriate, proportional and justified by law. This excludes arbitrary police controls, including controls based exclusively on ethnic features. Fighting cross-border crime is a legitimate purpose, which can justify a proportional interference in fundamental rights. The relevant competences of the Federal Police are applicable for everybody, without distinction between individuals. The European Court of Justice has in general found the Federal Police's monitoring cross-border traffic to be in compliance with the law. Search methods focusing exclusively on the appearance of an individual are not permitted. According to government estimates, police officers in general act in a responsible way and in accordance with the rule of law, which is reflected in the low number of complaints.

IV. Detention facilities

10. Unfortunately, on several occasions, some details of the German legal framework and its implementation may not have been explained thoroughly during the Working Group's visit, leading to some misperceptions. One example is the inadequate description of the procedures followed to determine the age of inmates of youth detention facilities.

Whenever the age of a detainee can be determined through a valid passport or other documents, the medical determination of age through the use of X-ray is not applied. Whenever a medical age determination is applied, its results are being disclosed during the criminal proceedings. Furthermore, all inmates have access to legal aid. By law, every person in pre-trial detention automatically has a public defender. There are no restrictions on visiting times for public defenders.

11. Surprisingly, the report states that inmates of the visited juvenile detention center receive meals only once a day. The facility's administration had invited the Working Group to discuss their routines, and to participate in the inmates' regular lunch. If the Group had had time to honor this invitation, such misunderstandings may have been avoided. In fact, once a day, at lunch time, a warm meal is served. Apart from that, inmates receive food items for their breakfast and dinner and have the possibility to store these food items in designated refrigerators and freezers, giving them greater autonomy over their meal times and food habits.

12. Crucially, the described proceedings concerning age determination, legal aid and meal distribution apply to all inmates, irrespective of their ethnic background.

V. Germany's colonial past

13. The German government is aware of the sensitive issues concerning the country's colonial heritage. The crimes committed under colonial rule as well as European colonialism and imperialism are covered in history classes, and serve as a stark reminder of our responsibility for human rights. The Federal Government is attaching great importance to dealing with related questions, including the mentioned suppression of revolts in former Southwest-Africa. To this aim, the German government is in dialogue with the government of Namibia as the democratically elected representative of the descendants of those who suffered under colonial rule. The aim is to reach a common assessment of the past and, on that basis, to identify ways of developing strategies to shape continued bilateral relations. Representatives of the Herero and Nama – ethnic groups particularly concerned – are included in the Namibian delegation leading the talks.

VI. Asylum seekers

14. In a number of areas, the German government would be interested in further clarifications by the Working Group. This includes the Group's recommendation for Germany to align its law to international human rights law, in order to respect the rights of asylum seekers. The German government has no indication of any discrepancies between the national legislation and international human rights laws. Germany is committed to honoring all its human rights obligations, which are guaranteed for all human beings, independently of their legal status. For example, in order to ensure that all children attend school, schools are no longer required to notify authorities of a student's illegal residency status.

VII. The ongoing commitment to fight discrimination

15. In accordance with its constitutional principles and human rights obligation, the German government is fully committed to make sure that everybody in its society enjoys equal rights and respect, independent of their background. The Working Group's findings and recommendations offer a valuable perspective and will be studied in detail by government authorities.

16. In order to overcome prejudices and other discriminatory practices, it is important to also look beyond government institutions. The education sector and programs to contribute to the general awareness play a crucial role in this regard. Additional funds are provided for schools were students with a migrant background are overrepresented. All federal states put considerable efforts into recruiting teachers with a migrant background.

17. A variety of programs already exists to help to overcome racism and racial discrimination, including the discrimination of people of African descent. One important example is the Federal Government's program "Live Democracy!", which supports initiatives, associations, projects and committed citizens that seek to encourage democracy and prevent extremism. Several initiatives of people of African descent participate in the program. In addition to 27 pilot projects initiated specifically on the prevention of all forms of racism and racial discrimination, "Live Democracy!" funds a network of NGOs in the field of the prevention of racism and empowerment of people of African descent. A number of "Local Partnerships for Democracy" (towns, cities, municipalities and rural districts which receive funding through the Federal Program) also have initiated individual activities and projects focusing on young people of African descent. Amidst the supported NGOs are the "Network African Rural and Urban Development" (NARUD) and the association "Each One Teach One" (EOTO), which cooperates closely with the organization "Initiative Black People in Germany" ("Initiative Schwarzer Menschen in Deutschland e.V."). The German Government also plans a range of activities in the context of the International Decade for People of African Descent.